



Reprinted
January 25, 2002

SENATE BILL No. 423

DIGEST OF SB 423 (Updated January 24, 2002 4:12 PM - DI 94)

Citations Affected: IC 23-2.

Synopsis: Franchise act material changes and advertisements. Requires that for certain persons connected with a franchise the securities commissioner must make a finding that the person creates an unreasonable risk before the commissioner may issue a stop order. Repeals the requirement that a franchisor promptly notify the securities commissioner in writing of a material change in the information contained in a registration by filing an application to amend the registration. Repeals the prohibition against publishing an advertisement concerning a franchise unless a copy of the advertisement has been filed with the securities commissioner. Makes a conforming amendment.

Effective: Upon passage; July 1, 2002.

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January 10, 2002, read first time and referred to Committee on Commerce and Consumer Affairs.
January 17, 2002, amended, reported favorably — Do Pass.
January 24, 2002, read second time, amended, ordered engrossed.

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Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE BILL No. 423

A BILL FOR AN ACT to amend the Indiana Code concerning
business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 23-2-2.5-14, AS AMENDED BY P.L.168-2001,
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 14. (a) The commissioner may, without a
4 hearing, issue a stop order denying the effectiveness of or suspending
5 or revoking the effectiveness of a registration if the commissioner finds
6 that the issuance of the order is in the public interest and also finds
7 that:
8 (1) there has been a failure to comply with this chapter or the
9 rules or orders of the commissioner pertaining to this chapter;
10 (2) the offer or sale of the franchise would constitute
11 misrepresentation to, or deceit or fraud on, the purchasers or
12 offerees;
13 (3) the franchisor has failed to comply with any rule promulgated
14 or order issued pursuant to section 12 of this chapter; or
15 (4) the franchisor, or the franchisor's predecessor, or any of the
16 franchisor's directors, trustees, general partners, chief executives,
17 financial officers, accounting officers, franchise sales officers, or

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other principal officers, or, if the franchisor is a limited liability company, any member or manager of the franchisor:

(A) during the ten (10) year period immediately preceding the date of registration, has:

(i) been convicted of a felony;

(ii) pleaded nolo contendere to a felony charge; or

(iii) been held liable in a civil action by final judgment;

if the felony or civil action involved fraud, embezzlement, misappropriation of property, or the violation of any state or federal statute involving the offer or sale of securities or franchises;

(B) is subject to any currently effective order affecting the franchise resulting from a proceeding or pending action brought by any individual or public agency or department;

(C) is a defendant in any pending criminal or material civil proceeding;

(D) during the ten (10) year period immediately preceding the date of registration, has been the defendant against whom a final judgment was entered in any material civil action; or

(E) is the franchisor or a principal executive officer or general partner of the franchisor and has, during the ten (10) year period immediately preceding the date of registration, reorganized due to insolvency or been adjudicated as a bankrupt.

(b) An order issued under this section based on a finding by the commissioner under subsection (a)(4)(A) must include a description of the charge, violation, or judgment referred to in subsection (a)(4)(A). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(B) must include a copy of the order referred to in subsection (a)(4)(B). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(D) must include a description of the judgment referred to in subsection (a)(4)(D). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(E) must include a description of the insolvency or adjudication referred to in subsection (a)(4)(E).

(c) Before issuing a stop order under subsection (a)(4), such an order must be based on a finding by the commissioner that involvement of such person(s) creates an unreasonable risk to prospective franchisees.

SECTION 2. IC 23-2-2.5-43, AS AMENDED BY P.L.168-2001, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2002]: Sec. 43. (a) All fees and funds of whatever character accruing from the administration of this chapter shall be:

- (1) accounted for by the secretary of state;
- (2) paid into the state treasury monthly; and
- (3) placed in the same account of the state general fund as established by IC 23-2-1-15(c), from which all compensation and expenses shall be paid for the administration of this chapter.

(b) The fee for filing a form for registration by notification of the sale of franchises under section 10.5 of this chapter is five hundred dollars (\$500).

(c) The fee for filing a registration renewal form under section 18 of this chapter is two hundred fifty dollars (\$250).

(d) When a registration notification form or registration renewal form is denied or withdrawn, the commissioner shall retain one hundred fifty dollars (\$150) of the fee.

~~(e) The fee for filing a posteffective amendment to a valid registration under section 20 of this chapter is fifty dollars (\$50).~~

SECTION 3. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2002]: IC 23-2-2.5-20; IC 23-2-2.5-25.

SECTION 4. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 423, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 4, delete "IC 23-2-2.5-26." and insert "IC 23-2-2.5-25".
and when so amended that said bill do pass.

(Reference is to SB 423 as introduced.)

SERVER, Chairperson

Committee Vote: Yeas 11, Nays 0.

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SENATE MOTION

Mr. President: I move that Senate Bill 423 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 23-2-2.5-14, AS AMENDED BY P.L.168-2001, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) The commissioner may, without a hearing, issue a stop order denying the effectiveness of or suspending or revoking the effectiveness of a registration if the commissioner finds that the issuance of the order is in the public interest and also finds that:

- (1) there has been a failure to comply with this chapter or the rules or orders of the commissioner pertaining to this chapter;
- (2) the offer or sale of the franchise would constitute misrepresentation to, or deceit or fraud on, the purchasers or offerees;
- (3) the franchisor has failed to comply with any rule promulgated or order issued pursuant to section 12 of this chapter; or
- (4) the franchisor, or the franchisor's predecessor, or any of the franchisor's directors, trustees, general partners, chief executives, financial officers, accounting officers, franchise sales officers, or other principal officers, or, if the franchisor is a limited liability company, any member or manager of the franchisor:

(A) during the ten (10) year period immediately preceding the date of registration, has:

- (i) been convicted of a felony;
- (ii) pleaded nolo contendere to a felony charge; or
- (iii) been held liable in a civil action by final judgment;

if the felony or civil action involved fraud, embezzlement, misappropriation of property, or the violation of any state or federal statute involving the offer or sale of securities or franchises;

(B) is subject to any currently effective order affecting the franchise resulting from a proceeding or pending action brought by any individual or public agency or department;

(C) is a defendant in any pending criminal or material civil proceeding;

(D) during the ten (10) year period immediately preceding the date of registration, has been the defendant against whom a final judgment was entered in any material civil action; or

(E) is the franchisor or a principal executive officer or general

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partner of the franchisor and has, during the ten (10) year period immediately preceding the date of registration, reorganized due to insolvency or been adjudicated as a bankrupt.

(b) An order issued under this section based on a finding by the commissioner under subsection (a)(4)(A) must include a description of the charge, violation, or judgment referred to in subsection (a)(4)(A). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(B) must include a copy of the order referred to in subsection (a)(4)(B). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(D) must include a description of the judgment referred to in subsection (a)(4)(D). An order issued under this section based on a finding by the commissioner under subsection (a)(4)(E) must include a description of the insolvency or adjudication referred to in subsection (a)(4)(E).

(c) Before issuing a stop order under subsection (a)(4), such an order must be based on a finding by the commissioner that involvement of such person(s) creates an unreasonable risk to prospective franchisees. "

Page 2, after line 4, begin a new paragraph and insert:

"SECTION 4. An emergency is declared for this act."

Renumber all SECTIONS consecutively.

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(Reference is to SB 423 as printed January 18, 2002.)

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